IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WP(C).No. 29731 of 2003(S)

PETITIONER:
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1. N.SASIDHARAN, S/O. K.NANU,
AGED 53 YEARS, DIVISIONAL FOREST OFFICER,
PRESENTLY CONSERVATOR OF FOREST, WORKING AT PLAN
AND RESEARCH CIRCLE, FOREST HEAD QUARTERS,
RESIDING AT RIVER VIEW, NAGAMBADAM, KOTTAYAM,
PIN-686 006.

2. B.MURALEEDHARAN, S/O. BHARGHAVAN,
AGED 50 YEARS, DEPUTY CONSERVATOR OF FORESTS(ADMN)
FOREST HEAD QUARTERS, TRIVANDRUM-14 (PRESENTLY
M.D., KERALA STATE BAMBOO CORPORATION, ANGAMALY),
RESIDING AT SOUPARNIKA, THAZHITHOLA, KOTTIYAM,
KOLLAM.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.R.SREERAJ
SRI.M.R.SUDHEENDRAN
SRI.M.R.HARIRAJ
SRI.ANIL R. NAIR
SMT.VINEETHA B.

RESPONDENTS:
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1. NAGESH PRABHU,
CONSERVATOR OF FORESTS (WORLD BANK PROJECT),
FOREST HEAD QUARTERS, TRIVANDRUM.

2. DR.S.K.KHANDURI,
CONSERVATOR OF FORESTS (SPECIAL AFFORESTATION),
FOREST HEAD QUARTERS, TRIVANDRUM.

3. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF ENVIRONMENT AND FORESTS, DEPARTMENT OF FORESTS AND WILD LIFE, PARYAVARAN BHAVAN, NEW DELHI.

4. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, SECRETARIATE, TRIVANDRUM.

BY ADV. SRI.P.S.SREEDHARAN PILLAI,
SRI.N.NANDAKUMARA MENON SCGSC FOR R3
SRI.K.VINODKUMAR
SRI.P.K.MANOJKUMAR
SMT.RESMI RAMACHANDRAN
SRI.JOHN VARGHESE, ASSISTANT SG
GOVT. PLEADER SHRI.BENNY GERVACIS FOR R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 9/02/2007, THE COURT ON 23/2/2007 DELIVERED THE FOLLOWING:

WPC 29731/03

APPENDIX

Petitioners' Exts:

Ext.P1 true copy of the final order dated 6.2.2003 in o.A.84/2001 on the file of the Honourable Central Administrative Tribunal, Ernakulam Bench.

Ext.P2 true copy of the Review Application 5/2003 filed by the petitioners before the Honourable Central Administrative Tribunal, Ernakulam Bench (without Annexure).

Ext.P3 true copy of the order dated 18.7.2003 in R.A.5/2003 inO.A.84/2001

Ext.P4 true copy of the notification No.17013/09/99-IFS II dated 29.12.2000 issued by the 3rd respondent.

Ext.P5 true copy of the order No.17013/9(i)/99-IFS II dated 20.12.2000 issued by the 3rd respondent.

Ext.P6 true copy of the letter No.D1-8971/88 dated 1.9.88.

Ext.P7 true copy of the order No.67160/Spi.ci/2000/GAD dated 16.11.2000 issued by the 4th respondent to the 2nd respondent.

Ext.P8 true copy of the notification No.17013-9/86-IFS II dated 27.10.1987 of the union of India.

Ext.P9 true copy of the notification No.38974/Spl.C2/88/GAD dated 2.8.1988 of the Union of India.

Ext.P10 true copy of the Gradation lists of Indian Forest Service Kerala Cadre, as on 1.7.1987.

Ext.P11 true copy of the Gradation lists of Indian Forest Service Kerala Cadre, as on 1.1.1988.

Ext.P12 true copy of the Gradation lists of Indian Forest Service Kerala Cadre, as on 1.7.1988.

Ext.P13 true copy of the order No.22012/34/2001-IFS II dated 26/8/2005 issued for 3rd respondent.

Ext.P14 true copy of authorised strength of the Indian Forest Service, Kerala Cadre with effect from 15.5.1987.

Ext.P15 true copy of list of direct recreuits IFS Officers/initial recruits working in Senior Posts as on 1.4.1988.

Ext.P16 true copy of promotee Indian Forest Service Officers working in Senior Scale Posts.

First Respondent's Exts:

Ext.R1(a) The photostat of the representation no.CF(P)NP/10/2004 dated 29/10/2004 submitted by the 1st respondent to the Chief Secretary, Government of Kerala, Thiruvananthapuram.

Ext.R1(b) The photostat copy of the representation No.CF(P)NP/11/2004 dated 1.11.2004 submitted by the 1st respondent to the Principal-Chief Conservator of Forests (D&P), Forest Headquarters, Vazhuthacaud, Thiruvananthapuram.

K.A. Abdul Gafoor & Antony Dominic, JJ.
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W.P.(C).No. 29731 of 2003
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Dated this the 23rd day of February, 2007.

Antony Dominic,J.

This writ Petition is filed seeking to quash Exts.P1 and P3. By Ext.P1 order of the Central Administrative Tribunal, Ernakulam Bench, O.A.No.84 of 2001 filed by respondents 1 and 2 herein was allowed. Aggrieved by Ext.P1, the petitioner filed Ext.P2 review petition. It was rejected by the Tribunal by Ext.P3 order finding that there was no error apparent on the face of the records warranting review of Ext.P1 order.

2. Although the paper book filed is voluminous, the facts necessary for deciding this writ petition lie in a narrow compass. It is seen that the petitioners commenced their services as directly recruited Assistant Conservators of Forests in the State Forest Service with effect from 1.5.1978. They were appointed by promotion to Indian Forest Service with effect from 28.2.1995 and 18.1.1999 respectively. In so far as respondents 1 and 2 are concerned, they passed I.F.S. examination conducted by the Union Public Service

Commission in the year 1984 and joined services as probationers with effect from 4.6.1984 and 25.1.1984. After undergoing the prescribed period of training, they were posted as Junior Time Scale Officers in the Kerala Forest Department. According to them, on completion of four years, they were entitled to be promoted to the Senior Time Scale with effect from 1.4.1988. At that time, there were three vacancies in the Senior Time Scale with effect from 12.4.1988 and the State Government appointed three persons, namely, C.K.Antony, V.John Thomas and V.Gopinathan in the Senior Time Scale with effect from 1.4.1988. They were in the State Forest Service and were inducted to I.F.S. in their quota. Subsequently, with effect from 3.11.1988 respondents 1 and 2 were also appointed to the Senior Time Scale.

3. Contending that they were entitled to Senior Time Scale with effect from 1.4.1988, respondents 1 and 2 filed representations on 15.4.1988 and 10.5.1988. Ext.P6 dated 1.9.1988 in the Writ Petition is the reply given to the second respondent, which was also marked as Annexure A5 before the Tribunal, by the Chief Conservator of Forests. The same is extracted below for convenience.

> "With reference to your letter cited, I am directed to inform you that your case will be taken up as and when vacancy arise in the senior time scale and that the appointment of SFS Officer was against promotion quota vacancies only."

For the reasons known to them alone, respondents 1 and 2 did not challenge Ext.P6 and thus the rejection of their claim vide Ext.P6 had become final as against them, long ago.

4. It would appear that there were disputes regarding seniority between direct recruits and promotees in the State Forest Service. The petitioners herein were parties thereto. It was ultimately decided by this Court in the decision reported in **Antony C.K**. v. **Muraleedharan & Ors.** - 1995 (2) I.L.R. 807 and affirmed by the Supreme Court by its decision reported in **C.K. Antony** v. **B.Muraleedharan & Ors.** - 1998 (6) S.C.C. 360. As a consequence thereof, the petitioners became seniors to the said three persons mentioned above inducted to I.F.S. from State Service quota and in the gradation list as on 1.5.1978, the petitioners were assigned rank Nos.1 and 2 by Ext.P4 order dated 20.12.2000 and their date of appointment to the Indian Forest Service was preponed to 26.5.1988. This was in place of the said three persons. Thereafter, by Ext.P5 order dated 20.12.2000, the year of allotment and seniority were also redetermined in accordance with the provisions of Indian Forest Service (Regulation of Seniority) Rules, 1968. It may be borne in mind that the State Officials are

entitled to be inducted to I.F.S. in the Senior Time Scale, while direct recruits to I.F.S. can get Senior Time Scale only in completion of four years service.

5. It was thereafter that respondents 1 and 2 are seen to have filed representations dated 15.7.2000 staking a fresh claim to the vacancies in the Senior Time Scale, with effect from 1.4.1988, which as stated earlier, had already been negatived as early as on 1.9.1988 by Ext.P6. To the representations so made, the State Government gave Ext.P7 reply, once again turning down their request. Thereupon respondents 1 and 2 filed O.A.No.84 of 2001 before the Central Administrative Tribunal, Ernakulam Bench with the following reliefs:

> "(i) This Hon'ble Tribunal may kindly be pleased to declare that the grant of year of allotment to respondents 3 and 4 as 1983 in the Indian Forest Service as illegal and void and to quash the notification Annexure A-17 in so far as it relates to respondents 3 and 4.
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> (ii) This Hon'ble Tribunal may kindly be pleased to set aside Annexure A-15 order as illegal and void.
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> (iii) This Hon'ble Tribunal may kindly be pleased to declare that the applicants are entitled to be appointed in the senior time scale of pay with effect from 1.4.1988 and to direct the respondents 1 and 2 to promote the applicants notionally to the senior time scale in the Indian Forest Service with effect from 1.4.1988 and to grant to the applicants all the consequential service benefits including the monetary benefits.

(iv) This Hon'ble Tribunal may issue such other appropriate order or direction which this Hon'ble Tribunal may deem fit and proper to issue in the interest of justice and

(v) To award to the applicants their costs in these proceedings."

The Tribunal by Ext.P1 order dated 6.2.2003 allowed the O.A. in the following terms:

"In the result this O.A. succeeds. We declare that the grant of year of allotment to Respondents 3 and 4 as 1983 is illegal and void and quash the notification A-17 in so far as it related to respondents 3 and 4. We also set aside and quash A-15. We direct the respondents to treat the applicants as having been promoted to the Senior Time Scale post w.e.f. 1.4.88 and refix the year of allotment of the respondents 3 & 4 accordingly. The monetary benefits arising out of the above direction if any shall be granted to the applicants from a date of one year prior to the date of filing of this O.A. on 22.1.2001."

As the position of the petitioners in the gradation list was thus upset, they filed Ext.P2 review petition which was also dismissed by Ext.P3 order on the ground that the power of review was confined to the scope of Order 47 Rule 1 C.P.C. and Section 17 of the Administrative Tribunal (Procedure) Rules, 1987 and that there was no error apparent on the face of the records. It is seen that subsequently, the impugned

order of the Tribunal was implemented by issuing Ext.P13 dated 26.8.2005, apparently taking advantage of the situation that this Court had, while admitting the Writ Petition declined to stay Exts.P1 and P3, by order dated 22nd September, 2003. However, curiously enough, despite the pendency of this Writ Petition with notice to the concerned respondents including the Government of India being third respondent herein, the order issued by the Government of India states that "**no further appeal has been filed or is pending in any Court of Law".** This order is also brought on record in this case.

6. We heard counsel for the petitioners as also the respondents at length. Though detailed arguments were led by both sides, assailing and supporting the impugned orders of the Tribunal; according to us, the short and only point that arises for consideration is whether in 2000 it was open to respondents 1 and 2 to have staked their claim to the vacancies in the Senior Time Scale with effect from 1.4.1988, in view of the background facts narrated earlier. As we have already stated, when C.K.Antony, V. john Thomas and V.Gopinathan were appointed in the three existing vacancies in to the Senior Time Scale by G.O.(MS)169/88/GAD dated 12.4.1988, respondents 1 and 2, on the ground that they had completed four years service, claimed to be entitled to Senior Time Scale in preference

to them and that too, to the aforesaid very vacancies and had represented to the Government by their representations dated 15.4.1988 and 10.4.1988 respectively. This was considered and their claim was rejected by Ext.P6 (Annexure A5 in the O.A.) dated 1.9.1988 and they were told that their case would be considered when vacancies arise in the Senior Time Scale and that the appointments made were against the quota of State Forest Service personnel only. Obviously, when they were told that their case would be considered when vacancies arise in the Senior Time Scale, it means that their case could be considered only as against the direct recruitment quota and not promotion quota, unlike in the case of aforesaid three persons. For reasons of their own, respondents 1 and 2 did not challenge Ext.P6 and thus Ext.P6 has attained finality in the eye of law. It was only after Ext.P4 dated 29.6.2000 was issued by the Government following the settlement of gradation list as on 1.5.1978 assigning rank Nos. 1 and 2 to the petitioners in place of the said three persons that respondents 1 and 2 filed their representation dated 15.7.2000. In the representations so filed, they once again raised their claim to the vacancies in the Senior Time Scale existing as on 1.4.1988. Their representations got rejected by Ext.P7 order dated 16.11.2000. What they have successfully done is that they got an issue which was lying

dead for more than 12 years resurrected and it is on that basis the O.A. was filed.

7. In our view, it was not open for the respondents to have staked their claim again, since Ext.P6 (Annexure A5 in the O.A.) has already attained finality. The petitioners herein came to picture for being placed above respondents 1 and 2, when they succeeded in getting seniority in the State Forest Service against the said three officers and consequent induction to I.F.S., in preference to them. So, respondents 1 and 2 cannot have a fresh cause of action against the petitioners now. What all have been said in Ext.P6 on 1.9.1988 when the said three officers were placed in Senior Time Scale squarely apply even now because the petitioners came in their shoes as a result of the Supreme Court judgment referred to above.

8. That apart, the claim being similar in all respects was highly belated as well and if allowed to be raised at this distance of time, Section 21 of the Administrative Tribunals Act, 1985 would be rendered otiose. Settled positions should not have been allowed to be unsettled at this distance of time. In the impugned order, though delay has been raised and considered, we note that the issue has not been addressed in the right perspective.

8. For the aforesaid reasons, we hold that the O.A. filed by

respondents 1 and 2 was unsustainable and the Tribunal has erred in allowing the same by Ext.P1 as affirmed by Ext.P3. In view of the above reasons, Exts.P1 and P3 are quashed and the O.A. will stand dismissed. Needless to say that Ext.P13 being consequential in nature also will not survive since Exts.P1 and and P3 are quashed.

Writ Petition is allowed and parties to suffer respective costs.

K.A.Abdul Gafoor,
Judge.

Antony Dominic
Judge.

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P.S. to Judge